

identifying data deleted to  
prevent clearly unwarranted  
invasion of personal privacy

PUBLIC COPY



U.S. Department of Homeland Security  
U. S. Citizenship and Immigration Services  
Administrative Appeals Office MS 2090  
Washington, DC 20529-2090

U.S. Citizenship  
and Immigration  
Services

L1

FILE:

MSC 06 084 12108

Office: CHICAGO

Date: JUN 02 2009

IN RE:

Applicant:

APPLICATION: Application for Status as a Temporary Resident pursuant to Section 245A  
of the Immigration and Nationality Act, as amended, 8 U.S.C. § 1255a

ON BEHALF OF APPLICANT:

INSTRUCTIONS:

This is the decision of the Administrative Appeals Office in your case. If your appeal was dismissed or rejected, all documents have been returned to the National Benefits Center. You no longer have a case pending before this office, and you are not entitled to file a motion to reopen or reconsider your case. If your appeal was sustained, or if your case was remanded for further action, you will be contacted.

A handwritten signature in black ink, appearing to read "John F. Grissom".

John F. Grissom  
Acting Chief, Administrative Appeals Office

**DISCUSSION:** The application for temporary resident status pursuant to the terms of the settlement agreements reached in *Catholic Social Services, Inc., et al., v. Ridge, et al.*, CIV. NO. S-86-1343-LKK (E.D. Cal) January 23, 2004, and *Felicity Mary Newman, et al., v. United States Immigration and Citizenship Services, et al.*, CIV. NO. 87-4757-WDK (C.D. Cal) February 17, 2004 (CSS/Newman Settlement Agreements), was denied by the director, Chicago. The decision is now before the Administrative Appeals Office (AAO) on appeal. The appeal will be dismissed.

The applicant submitted a Form I-687, Application for Status as a Temporary Resident under Section 245A of the Immigration and Nationality Act (Act), and a Form I-687 Supplement, CSS/Newman Class Membership Worksheet (together comprising the I-687 Application). The director denied the application for temporary residence because the applicant could not supply credible evidence of his unlawful residence in the United States for the requisite period of time. The director concluded that the applicant had not resided continuously in the United States for the requisite period and was not eligible to adjust to temporary resident status pursuant to the terms of the CSS/Newman Settlement Agreements.

The applicant is represented by counsel on appeal. Counsel maintains that the application for temporary residence was “improperly adjudicated,” and that the applicant’s testimony “did not give rise to a clear lack of credibility.” Counsel argues that the applicant is eligible for temporary resident status pursuant to the settlement agreements.

An applicant for temporary resident status must establish entry into the United States before January 1, 1982, and continuous residence in the United States in an unlawful status since such date and through the date the application is filed. Section 245A(a)(2) of the Act, 8 U.S.C. § 1255a(a)(2). The applicant must also establish that he or she has been continuously physically present in the United States since November 6, 1986. Section 245A(a)(3) of the Act, 8 U.S.C. § 1255a(a)(3). The regulations clarify that the applicant must have been physically present in the United States from November 6, 1986 until the date of filing the application. 8 C.F.R. § 245a.2(b)(1).

For purposes of establishing residence and physical presence under the CSS/Newman Settlement Agreements, the term “until the date of filing” in 8 C.F.R. § 245a.2(b)(1) means until the date the applicant attempted to file a completed Form I-687 application and fee or was caused not to timely file during the original legalization application period of May 5, 1987 to May 4, 1988. CSS Settlement Agreement, paragraph 11 at page 6; Newman Settlement Agreement, paragraph 11 at page 10.

The applicant has the burden of proving by a preponderance of the evidence that he or she has resided in the United States for the requisite period, is admissible to the United States under the provisions of section 245A of the Act, and is otherwise eligible for adjustment of status. The inference to be drawn from the documentation provided shall depend on the extent of the documentation, its credibility and amenability to verification. 8 C.F.R. § 245a.2(d)(5).

Although the regulation at 8 C.F.R. § 245a.2(d)(3) provides an illustrative list of contemporaneous documents that an applicant may submit in support of his or her claim of continuous residence in the United States in an unlawful status since prior to January 1, 1982, the submission of any other relevant document is permitted pursuant to 8 C.F.R. § 245a.2(d)(3)(vi)(L). To meet his or her burden of proof, an applicant must provide evidence of eligibility apart from the applicant's own testimony. 8 C.F.R. § 245a.2(d)(6).

The "preponderance of the evidence" standard requires that the evidence demonstrate that the applicant's claim is "probably true," where the determination of "truth" is made based on the factual circumstances of each individual case. *Matter of E-M-*, 20 I&N Dec. 77, 79-80 (Comm. 1989). In evaluating the evidence, "[t]ruth is to be determined not by the quantity of evidence alone but by its quality." *Id.* Thus, in adjudicating the application pursuant to the preponderance of the evidence standard, the director must examine each piece of evidence for relevance, probative value, and credibility, both individually and within the context of the totality of the evidence, to determine whether the fact to be proven is probably true.

Even if the director has some doubt as to the truth, if the applicant submits relevant, probative, and credible evidence that leads the director to believe that the claim is "probably true" or "more likely than not," the applicant has satisfied the standard of proof. See *U.S. v. Cardozo-Fonseca*, 480 U.S. 421 (1987) (defining "more likely than not" as a greater than 50 percent probability of something occurring). If the director can articulate a material doubt, it is appropriate for the director to either request additional evidence or, if that doubt leads the director to believe that the claim is probably not true, deny the application or petition.

The issue in this proceeding is whether the applicant has furnished sufficient credible evidence to meet his burden of establishing continuous unlawful residence in the United States for the duration of the requisite period, and that he is otherwise admissible to the United States. Here, the applicant has failed to meet this burden.

The AAO has reviewed all of the documents in the file in their entirety regarding the issue of the applicant's entry and residence in the United States for the requisite period. The applicant's proof of entry and residence includes an affidavit dated February 16, 2006 from [REDACTED]

Mr. [REDACTED] states therein that he has known the applicant and his father since 1982. However, this affidavit fails to establish that the applicant entered on or before January 1, 1982 because Mr. [REDACTED] stated to the adjudication officer when contacted by phone that the applicant entered the United States sometime in March, 1982. The applicant submitted no documentation to establish entry or residence on or before January 1, 1982, such as rental receipts, utility bills, tax returns, bank statements, lease agreements, or any other document that would support his assertion of eligibility. For example, the applicant states on the Form I-687 that he resided at [REDACTED] from October, 1981 to July, 1987. However, the applicant did not submit any credible, verifiable documents to establish his residence for that period of time.

As noted above, to meet his or her burden of proof, an applicant must provide evidence of eligibility apart from his or her own testimony, and the sufficiency of all evidence produced by the applicant will be judged according to its probative value and credibility. 8 C.F.R. § 245a.2(d)(6). The applicant has failed to meet this burden of proof regarding his entry and residence in the United States for the requisite period, and his application for permanent resident status pursuant to the LIFE Act must be denied on those grounds.

Going beyond the decision of the director, the record before the AAO also reveals that the applicant has multiple criminal convictions. An alien who has been convicted of a felony or of three or more misdemeanors committed in the United States is ineligible for adjustment to Lawful Permanent Resident status. 8 C.F.R. § 245a.18(a)(1). "Felony" means a crime committed in the United States punishable by imprisonment for a term of more than one year, regardless of the term such alien actually served, if any, except when the offense is defined by the state as a misdemeanor, and the sentence actually imposed is one year or less, regardless of the term such alien actually served. Under this exception, for purposes of 8 C.F.R. Part 245a, the crime shall be treated as a misdemeanor. 8 C.F.R. § 245a.1(p).

"Misdemeanor" means a crime committed in the United States, either (1) punishable by imprisonment for a term of one year or less, regardless of the term such alien actually served, if any, or (2) a crime treated as a misdemeanor under 8 C.F.R. § 245a.1(p). For purposes of this definition, any crime punishable by imprisonment for a maximum term of five days or less shall not be considered a misdemeanor. 8 C.F.R. § 245a.1(o).

The term 'conviction' means, with respect to an alien, a formal judgment of guilt of the alien entered by a court or, if adjudication of guilt has been withheld, where - (i) a judge or jury has found the alien guilty or the alien has entered a plea of guilty or nolo contendere or has admitted sufficient facts to warrant a finding of guilt, and (ii) the judge has ordered some form of punishment, penalty, or restraint on the alien's liberty to be imposed.

Section 101(a)(48)(A) of the Immigration and Naturalization Act (Act), 8 U.S.C. § 1101(a)(48)(A).

The record contains court documents that reflect the applicant has numerous arrests and convictions for misdemeanor offenses in both Du Page and Cook County, Illinois:

- An April 22, 1991 arrest for violating Chapter 38 25-1(a)(2) of the Illinois Criminal Code, *Mob Action* (Docket No. 91-2451-01). This charge was dismissed (*nolle prosequi*) on June 12, 1991.
- A June 12, 1991 conviction for a violation of 625 Illinois Consolidated Statutes (ILCS) 5/11-402, *Motor Vehicle Accident Involving Damage to Vehicle* (Docket No. 91-

2451-02). The applicant paid a fine of \$50, and placed under court supervision for an unspecified period of time. This offense is considered a Class A misdemeanor.

- A June 12, 1991 conviction for a violation of 625 ILCS 5/11-403, *Duty to Give Information and Render Aid* (Docket No. 91-2451-03). The applicant paid a fine of \$50, and was placed under court supervision for an unspecified period of time. This offense is considered a Class A misdemeanor.
- A February 5, 1993 conviction for a violation of 720 ILCS 5/16A-3, *Retail Theft* (Docket No. 92-2514). The applicant paid a fine of \$1,000 and was placed on probation for one year. This offense is considered a Class A misdemeanor.
- A September 13, 2004 conviction for a violation of 625 ILCS 5/11-501-A2, *Driving Under the Influence of Alcohol or Drugs*, (Docket No. 2004-1731-01). The applicant was placed on probation for one year and fined \$969. This offense is considered a Class A misdemeanor.
- A September 13, 2004 conviction for a violation of 625 ILCS 5/11-709-A, *Improper Lane Usage – Change Lanes Unsafely*, (Docket No. 2004-1731-02). The applicant was placed on probation for one year and fined \$190. This offense is considered a Class A misdemeanor.
- The record reveals three additional charges arising from the September 13, 2004 conviction. These charges were dismissed (*nolle prosequi*) on September 13, 2004: a violation of 625 ILCS 5/11-804-B, *Failure to Signal When Turning*, a violation of 625 ILCS 5/6-112, *Failure to Carry Driver’s License While Driving*, and a violation of 625 ILCS 5/11-907-A, *Failure to Yield to Emergency Vehicles*.<sup>1</sup>

The record demonstrates that the applicant has five misdemeanor convictions in the state of Illinois. Furthermore, the applicant’s conviction for *Retail Theft* is a crime involving moral turpitude (CIMT). See *Gutnik v. Gonzales*, 469 F.3d 683, 685 (7<sup>th</sup> Cir. 2006). An applicant who has been convicted of a CIMT is inadmissible, and therefore ineligible for permanent resident status. But, an alien with one CIMT is not inadmissible if he or she meets the petty offense exception. See 8 U.S.C. § 1182(a)(2)(A)(ii). A CIMT will meet the petty offense exception if “the maximum penalty possible for the crime of which the alien was convicted . . . did not exceed imprisonment for one year and . . . the alien was not sentenced to a term of imprisonment in excess of 6 months” or the crime was committed when the alien was under 18 years of age. This exception does not apply to the applicant because he was not under 18 years of age when

---

<sup>1</sup> The AAO notes that the record also contains evidence of two additional arrests in Cook County: *disorderly conduct* in 1997, and *assault* in 1999. Both offenses are classified as misdemeanors, but the court documents do not reveal an ultimate disposition regarding the charge of *disorderly conduct*. The *assault* charge was dismissed on June 24, 1999, because the complaining witness did not appear in court.

the crime was committed and he was sentenced to court supervision for one year.

The applicant stands convicted of five misdemeanors. He is therefore ineligible for temporary resident status pursuant to 8 U.S.C. §1255a(4)(B); 8 C.F.R. § 245A.4(B). No waiver of such ineligibility is available. The applicant is, therefore, ineligible for temporary resident status under section 245A of the Act on this basis. For this additional reason, the application may not be approved.

**ORDER:** The appeal is dismissed. This decision constitutes a final notice of ineligibility.